

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Improving Public Safety Communications)	WT Docket No. 02-55
in the 800 MHz Band)	
)	
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	

REPLY COMMENTS OF MOTIENT COMMUNICATIONS INC.

Motient Communications Inc. (“Motient”), provider of wireless data service over its network of 800 MHz band sites, hereby files reply comments in this proceeding on improving public safety communications in the 800 MHz band.¹

In its initial comments in this proceeding, Motient urged the Commission to address existing and potential interference to public safety on a local level, before adopting a reorganization plan for the 800 MHz band. In particular, a case-by-case analysis of the incidents of harmful interference using *The Best Practices Guide* would be less disruptive than a large-scale reorganization plan. If the Commission decides to reorganize the 800 MHz band as a long-term solution, Motient continues to support the move of public safety operators to the 700 MHz band. However, any reorganization involving the 700 MHz band will take a long time to effect, and in the interim, the existing interference problem must be addressed. Thus, to address the ongoing interference in the 800 MHz band, Motient advocates codification of the *Best Practices* solutions and Commission enforcement of the “first in time, first in right rule.”

¹ See Improving Public Safety Communications in the 800 MHz Band; and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, FCC 02-81 (rel. March 15, 2002).

I. RELOCATION OF PUBLIC SAFETY TO THE 700 MHZ BAND WOULD BE THE MOST EFFECTIVE WAY TO ACHIEVE THE COMMISSION’S GOALS

Motient continues to believe that moving all public safety systems currently operating in the 800 MHz band to the 700 MHz band is the best long-term solution for public safety communications. This proposal received significant support among commenters, including virtually all types of licensees in the 800 MHz band.² Moving public safety to the 700 MHz band is a superior plan to the other restructuring proposals because it would have minimal disruption on existing licensees, provide relocation funding, allow for the concurrent testing of public safety systems prior to a transition, and would not confer a spectrum windfall on any party.

II. THE COALITION PROPOSAL PRESENTED BY CINGULAR DOES NOT ADDRESS REDUCTION OF ONGOING INTERFERENCE IN THE 800 MHZ BAND

In its comments, Motient supported the proposal formulated by Cingular Wireless and the private wireless industry (“Coalition Proposal”), which endorsed relocating public safety operations in the 800 MHz band to the 746-806 MHz band. Motient continues to support the proposal to relocate public safety systems to the 700 MHz band as the most effective way to resolve the interference between public safety and CMRS operators. However, while the Coalition Proposal would eliminate the interference problem for public safety systems, it would not solve CMRS interference to B/ILT and traditional SMR licensees that remain in the 800

² See, e.g., Comments of Madison County East Transit District, Comments of Private Wireless Coalition, Comments of Association of American Railroads, Comments of Lockheed Martin Corp., Comments of NAM/MRFAC, Comments of Fischer Wireless Services, Inc., Comments of Coupe Communications, Inc., Joint Comments of Electronic Specialties, *et al.*, Comments of Jamestown Communications and Midwest Management, Comments of Blooston, Mordkofsky, Dickens, Duffy and Pendergast, Comments of Fresno Mobile Radio, Inc., Comments of Southern LINC, Comments of AT&T Wireless Services, Inc., Comments of Cingular Wireless and Alltel Communications, Inc., Comments of CTIA, and Comments of Business Autophones, Inc.

MHz band.³ Therefore, Motient also supports the proposal of the Private Wireless Coalition to address this additional CMRS interference through a codified *Best Practices* solution.⁴

Codifying the *Best Practices Guide* is necessary because implementation of any band plan will take a significant period of time. These additional measures will address the continuing CMRS interference in the 800 MHz band until such time as the Commission is able to separate interleaved cellular operations from non-cellularized systems. Furthermore, clear case-by-case procedures to address interference will continue to be necessary during any transition and after implementation of a rebanding proposal.

III. THE COMMISSION MUST ENFORCE ITS “FIRST IN TIME, FIRST IN RIGHT” RULE OF INTERFERENCE PROTECTION

Any resolution of the interference problem in the 800 MHz band should not impose an undue burden on 800 MHz operators that are not causing interference. The fair approach for remedying ongoing interference in the 800 MHz band would be for the Commission to apply its long-standing interference protection doctrine. In the absence of a particular rule that would solve an interference dispute, the Commission has historically applied the “first in time, first in right” doctrine,⁵ which prohibits new users of spectrum from impeding or interfering with existing users that serve the public interest. In an interference dispute between two broadcast stations, the Commission explained the policy: “It is clear that the ‘newcomer’ is responsible, financially and otherwise, for taking whatever steps may be necessary to eliminate objectionable

³ See Comments of Private Wireless Coalition, at 11; Comments of Palomar Communications, *et al.*, at 29-30; Comments of City of Austin, Texas, at 1-2.

⁴ See Comments of Private Wireless Coalition, at 11.

⁵ This doctrine is alternatively known as the “last-in fixes the interference” policy, or the “first in right” doctrine.

interference.”⁶ Since then, the doctrine has been the Commission’s “mainstay of interference protection”⁷ and has governed the sharing of frequencies by co-primary licensees in many services.⁸

The “first in time, first in right” doctrine is equally applicable to the 800 MHz band, where Nextel, the “newcomer,” is causing interference to the public safety entities whose use of the band predates Nextel’s.⁹ Nextel’s proposal does not adequately account for the fact that Nextel is the main source of interference in the band, but instead shifts the burden of interference protection to other users of the 800 MHz band. The Commission should require Nextel (and any other cellular carriers at fault) to remedy the interference they cause, even if their operation is within the bounds of their authorization.

⁶ *Sudbrink Broadcasting of Georgia*, 65 FCC 2d 691, 692 (1977). *See also Midnight Sun Broadcasting Co.*, 11 F.C.C. 1119 (1947)(articulating the interference protection policy for the first time).

⁷ Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 14 FCC Rcd 20912, ¶ 211 (1999).

⁸ *See, e.g.*, Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, 15 FCC Rcd 12315, ¶ 133 (2000)(“Under our first-in-time rule, the first co-primary licensee is entitled to protection from harmful interference by subsequent licensees . . . [T]he subsequent licensees . . . have the option of sharing spectrum . . . , provided that they do not cause harmful interference to the incumbents”); Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions; Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, MM Docket No. 97-217, *Report and Order on Reconsideration*, FCC 99-178 (rel. July 29, 1999)(applying the “first in time, first in right” interference protection policy to MDS and ITFS wireless cable services); Revision of Part 22 of the Commission’s Rules Governing the Public Mobile Services, 9 FCC Rcd 6513, 6558 (1994) (explaining that under 47 C.F.R. § 22.371, Public Mobile Service licensees who construct or modify towers in the immediate vicinity of AM broadcast stations are obligated to take all necessary steps to correct interference problems caused by the new or modified construction); 47 C.F.R. § 74.703(d) (“When a low power TV or TV translator station causes interference to a CATV [cable] system . . . the earlier user, whether cable system or low power TV or TV translator station, will be given priority on the channel, and the later user will be responsible for correction of the interference”); 47 C.F.R. § 101.105 (providing interference protection criteria under which fixed microwave services must protect existing or previously applied for systems).

⁹ Nextel also is obligated under Section 90.173 of the Commission’s rules to cooperate in the use of Part 90 spectrum.

IV. CONCLUSION

Motient continues to urge the Commission to consider less severe alternatives to total rebanding of the 800 MHz band and work toward a solution that is fair to all 800 MHz licensees. If the Commission decides that it must adopt a wholesale rebanding plan, Motient supports the Private Wireless Coalition's proposal to relocate public safety operators to the 700 MHz band in conjunction with measures to address ongoing CMRS interference in the 800 MHz band. But regardless of the long-term solution adopted in this proceeding, it is most important for the Commission to implement a short-term solution to the existing interference problem in the 800 MHz band without delay.

Respectfully Submitted,

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